

- (1) Whether claimant's injury arose out of and in the course of his employment with IBP, Inc.

(2) Whether the Appeals Board has jurisdiction pursuant to K.S.A. 44-534a to review this matter at this time.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds:

(1) The decision of Administrative Law Judge Thomas F. Richardson dated May 16, 1994, remains in full force and effect.

The record is clear that at the preliminary hearing the parties stipulated to all necessary admissions for purposes of the preliminary hearing. It is clear that, contrary to claimant's assertion, the parties stipulated that claimant's accidental injury arose out of and in the course of his employment and the only issue at the preliminary hearing was claimant's entitlement to temporary total disability as a result of his termination from employment with respondent, and respondent's failure to accommodate claimant. There is no merit to claimant's argument that Judge Richardson found claimant's injuries did not arise out of his employment.

(2) K.S.A. 44-534a provides for preliminary hearings and specifically defines and limits the jurisdictional scope of review by the Appeals Board. The Board is governed by the provisions of K.S.A. 44-551 which provides that "review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing." K.S.A. 44-534a(2) provides that the following issues from a preliminary hearing shall be considered jurisdictional: "whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply..." Since none of these issues are disputed in this matter, the Appeals Board does not have jurisdiction to modify or change the decision of Administrative Law Judge Thomas F. Richardson and the decision of May 16, 1994, is therefore affirmed in its entirety.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review this matter and that the Order of Administrative Law Judge Thomas F. Richardson, dated May 16, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of August, 1994.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Robert A. Levy, 1111 East Kansas Plaza, Garden City, KS 67846
Paula Greathouse, PO Box 2204, Emporia, KS 66801
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director